

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Wynship W. Hillier)	
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Filing Date: May 15, 2017)	Case No.: FIA-17-0011
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Issued: June 6, 2017

Decision and Order

On May 15, 2017, Wynship W. Hillier (Appellant) appealed a determination issued by the Department of Energy’s (DOE) National Nuclear Security Administration (NNSA) on February 13, 2017 (Request No. 16-00180-H). In that determination, NNSA responded to a request filed by the Appellant under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Appellant challenges the adequacy of the NNSA’s search for responsive documents as well as other aspects of NNSA’s determination. As explained below, we have determined that the Appeal should be denied.

I. Background

The National Atmospheric Release Advisory Center (NARAC) is a resource center at Lawrence Livermore National Laboratory (LLNL) that assists clients with planning for and responding to atmospheric releases of hazardous materials. On June 20, 2016, the Appellant filed a FOIA request for records identifying the clientele of NARAC. FOIA Request from Wynship W. Hillier to NNSA (June 20, 2016) at 1. The Appellant defined “clientele” as including: (1) clients of NARAC’s professional services; and (2) remote users of NARAC’s computerized modeling capability. *Id.* Regarding the latter, the Appellant specified that he sought records of users of online software products or internet portals offered by NARAC, such as NARAC Web, CMweb, IXP, IMAAC Web and iClient. *Id.* The Appellant requested responsive records dating as far back as 2007. *Id.*

In a determination issued on August 29, 2016, NNSA found that LLNL did not possess any records responsive to the Appellant’s request.¹ Determination Letter from Jane R. Summerson,

¹ Prior to this request, the Appellant filed a similar FOIA request on November 20, 2015. In response to that request, NNSA found that no responsive records existed. After the Appellant filed an appeal, NNSA indicated to us that recovering a list of NARAC clients would require manually extracting data from NARAC’s computer systems. Because the FOIA does not require the creation of new documents, we denied the appeal. *Wynship W. Hillier*, OHA Case No. FIA-16-0021 (2016) at 2. The Appellant subsequently filed a revised request, and the NNSA responded with its August 29, 2016, determination.

Authorizing and Denying Official, NNSA, to Appellant (August 29, 2016). On October 3, 2016, the Appellant filed an appeal with the Office of Hearings and Appeals (OHA) challenging the adequacy of the NNSA's search for responsive records. Appeal Letter from Wynship W. Hillier to Director, OHA (October 2, 2016). As we were reviewing the appeal, NNSA informed us that LLNL maintains a database with information about the users of NARAC's online services. NNSA further stated that LLNL could export information on those users to an Excel spreadsheet. *Wynship W. Hillier*, OHA Case No. FIA-16-0052 (2016) at 2. Based on this information, OHA granted the appeal and remanded the request to NNSA for further processing. *Id.* at 3.

On February 13, 2017, NNSA issued a revised determination. Determination Letter from Jane R. Summerson, Authorizing and Denying Official, NNSA, to Appellant. Along with the determination, NNSA released one document, a spreadsheet obtained from LLNL. The document has two sections. The first section is a list of organizations that have access to NARAC's online services via NARAC Web and CMweb. The second section is a list of organizations that have access to NARAC's online services via IXP.² The record contains no redactions. *Id.*

In his Appeal, filed on May 15, 2017, the Appellant challenges the adequacy of NNSA's search. He makes several arguments. First, noting that his request sought records identifying clients of NARAC's professional services and not just its online services, he asserts that NNSA should have either provided records listing those clients or explained why that list is unavailable. Appeal Letter from Appellant to Director, OHA (May 15, 2017) (Appeal) at 2. Second, he contends that NNSA's search may not have been adequate because the released document does not provide a list of users of iClient or iMAAC Web, two of the web products mentioned in his request. *Id.* at 2-3. Third, he states that the list provided to him does not appear to be complete because it contains only the names of governmental entities and does not list the names of private organizations, tribal groups or private individuals. *Id.* at 3.

Finally, the Appellant contends that the lack of redactions in the released document raises questions about whether NNSA improperly deleted information from it. *Id.* He observes that NNSA previously informed OHA that producing the requested record would require a time consuming redaction process. *See Wynship W. Hillier*, OHA Case No. FIA-16-0052 (2016) at 2-3. He contends that the FOIA does not permit agencies to delete information from records as an alternative to redacting it under a FOIA exemption. Appeal at 3.

II. Analysis

The FOIA requires that a search be reasonable, not exhaustive. "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, "[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate." *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1981) (emphasis in original). We have not

² According to NARAC's web site, NARAC Web provides users with access to NARAC's modeling tools. CMweb provides users with emergency response information and products. IXP provides International Atomic Energy Agency member states with access to 3-D model predictions of the consequences of airborne radiological releases. *See* NARAC, <https://narac.llnl.gov/home> (last visited June 1, 2017).

hesitated to remand a case where it is evident that the search conducted was, in fact, inadequate. *See, e.g., Ralph E. Sletager*, OHA Case No. FIA-14-0030 (2014).

We begin with the Appellant's argument that NNSA may have neglected to conduct a search for records that identify the clients of NARAC's professional services.³ Our review indicates that this is not the case. According to the NNSA's Livermore Field Office (LFO), which consulted with LLNL regarding this appeal, the document released to the Appellant was produced by extracting information from the electronic database referenced in our prior decision on this matter, OHA Case No. FIA-16-0052. *See* Memorandum of Telephone Conversation between Daniel Culver, LFO, and Gregory Krauss, OHA (May 23, 2017). The LFO informed us that all of NARAC's current clients have been captured on the record provided to the Appellant. If an organization is not listed on the document, NARAC does not perform any type of work for the organization. Email from Daniel Culver, LFO, to Gregory Krauss, OHA (May 30, 2017); Memorandum of Conversation between Daniel Culver, LFO, and Gregory Krauss, OHA (May 30, 2017) (Culver Memo). Thus, to the extent that NARAC provides the professional services that the Appellant refers to in his request, all clients of those services are listed on the released document.

As to the Appellant's other concerns regarding the completeness of the list, the LFO informed us that the list does not identify organizations with access to iMAAC Web or iClient because those services have been discontinued and were not in use at the time of the Appellant's request. Culver Memo; Memorandum of Telephone Conversation between Christina Hamblen, NNSA, and Gregory Krauss, OHA (May 23, 2017). Moreover, NARAC does not maintain information in the database regarding former clients, and it does not possess any other list of former clients. *See* Culver Memo. However, it is possible that former users of iMAAC Web or iClient could be listed on the record released to the Appellant if those organizations are using currently-offered software tools. Memorandum of Telephone Conversation between Christina Hamblen, NNSA, and Gregory Krauss, OHA (May 23, 2017). NNSA also explained that private organizations, tribal organizations and private individuals are not on the list because they do not have access to NARAC's services. *Id.*

With regard to the Appellant's contention that NNSA may have improperly deleted information from the record rather than redacting it and identifying a FOIA exemption,⁴ we find this argument without merit. According to the LFO, LLNL extracted from the database only information it regarded as responsive, *i.e.* the names of organizations using NARAC's services. LLNL did not extract information that it considered non-responsive, such the names of individuals who are affiliated with those organizations. Accordingly, there was never any point at which information was deleted from the record. *Id.* We also agree that the names of individuals affiliated with each organization would not be responsive to this request, given that NARAC's clients are organizations and not individuals. It was not necessary for LLNL to extract this information or for NNSA to analyze whether it should be withheld under any of the FOIA's exemptions.

³ The Appellant explained that he defines "professional services" in this context as the services provided to clients by NARAC experts, whether distinct from or in combination with NARAC's online web tools. Memorandum of Conversation between Appellant and Gregory Krauss, OHA (May 23, 2017).

⁴ The FOIA lists nine exemptions that set forth the types of information that may be withheld at the discretion of the agency. 5 U.S.C. § 552(b)(1)-(9). Those nine categories are repeated in the DOE regulations implementing the FOIA. 10 C.F.R. § 1004.10(b)(1)-(9).

III. Conclusion

Based on the foregoing, we find that NNSA conducted a search reasonably calculated to uncover the materials sought by the Appellant, and that its search was therefore adequate under the FOIA. Consequently, we deny the present Appeal.

IV. Order

It is hereby ordered that the Appeal filed on May 15, 2017, by Wynship W. Hillier, Case No. FIA-17-0011, is denied.

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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